



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751

September 20, 1984

ATTORNEY GENERAL OPINION NO. 84-98

Mr. Larry V. Christ
General Counsel
Office of the Securities Commissioners
503 Kansas Avenue, Suite 212
Topeka, Kansas 66603

RE: Personal and Real Property -- Uniform Land Sales
Practices Act -- Land Sales Subject to the Act.

Synopsis: Interests in land subject to administration by the securities commissioner pursuant to the Uniform Land Sales Practices Act, which qualify as a "subdivision" or "subdivided lands" under K.S.A. 58-3301, include "time share" and "undivided fractional ownership" interests so long as they are not exempted by the provisions of K.S.A. 58-3303. Cited herein: K.S.A. 58-3301, 58-3303, and K.S.A. 1983 Supp. 77-201.

Dear Mr. Christ:

You have requested our opinion regarding whether developments sold in the form of "time-share" or "undivided fractional ownership" interests are covered by the provisions of the Uniform Land Sales Practices Act (K.S.A. 58-3301 et seq).

The Uniform Land Sales Practices Act was approved by the National Conference of Commissioners on Uniform State Laws in 1966. It was enacted by the Kansas legislature with very minor changes in the first legislative session thereafter and subsequently modified slightly in 1976. As is pointed out in the prefatory note accompanying the Model Uniform Land Sales Practices Act adopted by the National Conference of Commissioners [Handbook of the National Conference of Commissioners on Uniform State Laws and Proceedings (1966) and 7A Uniform Laws Annotated, Uniform Land Sales Practices Act 367], the Act is designed to promote

uniformity in the regulation of the land sales industry, and to place individual purchasers of large scale promotional land offerings on an equal bargaining basis with the promoter-seller. The prefatory note goes on to state the purpose of the Act is achieved by providing for the examination of the promotional offering to determine (1) that it affords full and fair disclosure to the prospective buyers, (2) that the seller can convey unencumbered legal title to the purchaser, and (3) that there are sufficient safeguards to assure that the seller will complete the promised offsite improvements on the land.

A subdivider satisfying the jurisdictional requirements of the Act is required to register his land before offering it for sale. This requirement applies to land located either within or without the state which is offered for sale in Kansas. Only sellers of a "subdivision or "subdivided lands" are subject to regulation pursuant to this Act, with those terms defined at subsection (6) of K.S.A. 58-3301 as:

"'subdivision' and 'subdivided lands' means any land situated within or without the state of Kansas which is divided or is proposed to be divided for the purpose of disposition into fifty (50) or more lots, parcels, units or interests and also includes any land whether contiguous or not if fifty (50) or more lots, parcels, units, or interests are offered as a part of a common promotional plan of advertising and sale."

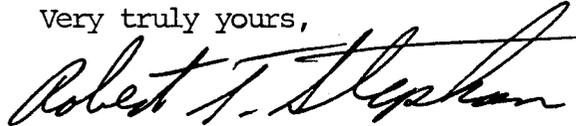
The Kansas legislature modified the above subsection of the Model Act by adding after "any land" the phrase "situated within or without the state of Kansas" and expanded the number of lots from 25 to 50.

You inquire about the scope of the word "interests" contained in the language used to define the words "subdivision" and "subdivided lands" in K.S.A. 58-3301 (6). The term "interests" as used in its plural sense in referring to such lands "divided into fifty (50) or more lots, parcels, units or interests" is not specifically defined by the Act, and accordingly must be afforded its ordinary meaning pursuant to K.S.A. 1983 Supp. 77-201, Second. See also Personal Thrift Plan of Wichita, Inc. v. State of Kansas, Division of Taxation, 229 Kan. 622, 624 (1981). Although the term "interest" has many definitions, when applied to property the most appropriate one appearing in Black's Law Dictionary, Special Fifth Edition (1979), defined "interests" as "(t)he most general term that can be employed to denote a right, claim, title or legal share of something." Such a broad definition of an "interest" or "interests" quite clearly appears to be what the Kansas legislature contemplated when the Committee on Interstate Cooperation submitted the Model Act drafted by the National Conference of Commissioners on Uniform State Laws to the Kansas legislature in 1967. As noted earlier, the Act was adopted virtually intact.

Land sales transactions which are not considered to fall within the regulatory scope of the Act are expressly exempted by K.S.A. 58-3303. As

you noted in your letter of July 9, 1984, "time share" interests in condominiums which are in existence, or on which there is a legal obligation to construct buildings within two years of the disposition of the property are exempt from regulation under the Act. [K.S.A. 58-3303 (3)] The comment following subsections (3) and (4) of the Model Act, which are identical to K.S.A. 58-3303 (3) and (4), states that the subsections were designed to limit the application of the Act to land upon which the seller has no obligation to building structural improvements. (7A ULA, supra at 344). Thus, we are of the opinion that the intent of the Uniform Land Sales Practices Act was to include any "time share" or "undivided fractional ownership" interests, including those intended for non-exclusive recreational usage, in "subdivisions" or "subdivided lands," as those terms are defined by the Act, unless those interests are specifically exempted by K.S.A. 58-3303.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Carl M. Anderson
Assistant Attorney General

RTS:CMA:ssb